PROFESSOR DR. A. KAHAR BADOR & ORS.

v.

N. KRISHNAN & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
HASHIM YEOP SANI J
[CIVIL SUIT NO. A9 OF 1982]
10 MAY 1982

CIVIL PROCEDURE: *Injunction - Application to set aside interlocutory injunction - Allegation of suppression or omission of material facts and deliberate misrepresentation of material facts - Counter-allegations of irregular appointment of care-taker committee of management.*

On 12 April 1982 an *ex parte* injunction was granted to restrain the defendants in the suit from acting in any way in the capacity of elected members of the committee of management of the Mercantile Co-operative Thrift & Loan Society Limited, Selangor (the "Society"). The application for the interlocutory injunction was supported by the 1st plaintiff's affidavit, which he concluded with the statement that as the election of the defendants was irregular, the defendants had no right to meddle in the affairs of the Society and should be restrained from causing incalculable loss to the Society.

The defendants applied to set aside the interlocutory injunction. Later they also applied to set aside the writ on the grounds of lack of jurisdiction and want of authority in suing the Society.

On the application to set aside the interlocutory injunction, the defendants submitted primarily on the ground that the *ex parte* injunction was obtained by suppression or omission of material facts and there was deliberate misrepresentation of material facts. They alleged that the affidavit of the 1st plaintiff omitted to mention a number of matters and events which had taken place at the annual general meeting, including the vote of nonconfidence passed against the committee of management and that it also tended to mislead the Court by referring to the defendants seizing control of the meeting which they claimed never happened. The defendants alleged that the 1st plaintiff was disqualified from holding office, that he and others were guilty of malpractice and misappropriation and of violation of the Society's by-laws.

The plaintiffs counter alleged violations and irregularities committed by the defendants.

Held:

[1] That the omissions by the 1st plaintiff to mention certain matters in his affidavit were not fatal to his application for interlocutory injunction and they did not amount to a suppression of material facts or were intended to mislead the Court nor was the Court in fact misled.

[2] As all the allegations of the defendants were denied by the plaintiffs, they became serious issues to be tried.

[3] The counter-allegations by the plaintiffs were equally serious. For example, doubt seemed to have been cast on the legality of the supposed care-taker committee of management itself.

[4] As no allegation had been made regarding the constitutionality or validity of the annual general meeting of the Society it cannot be disputed, at least at this stage, that *prima facie* the plaintiffs were validly elected to office. A vote of no-confidence against the plaintiffs did not make their election any less valid.

Per curiam:

(i) It is enough for a person who comes to the Court for an interlocutory injunction to show that he has a fair question to raise as to the existence of the right which he alleges. The Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts. A man who seeks the aid of the Court is not required to make out a clear title but must be able to show a fair *prima facie* case in support of the title which he asserts.

(ii) An interlocutory injunction will not be dissolved unless the misrepresentation or suppression was of such a character as to mislead the Court or if the true picture was presented the Court would probably have not granted the injunction.

[Motion dismissed and interlocutory injunction ordered to continue until trial of the suit.]

Case referred to:

The Great Western Railway Co. v. The Birmingham & Oxford Junction Railway Co. & Ors. [1978] 1 MLJ 42

Legislation referred to:

Co-operative Society Ordinance 1948, s. 49

For the applicants - Atma Singh
For the defendants - Marjoribanks

JUDGMENT

Hashim Yeop Sani J:

On 12 April 1982 an *ex parte* injunction was granted to restrain the defendants in the suit either by themselves or their agents or otherwise howsoever from acting in the capacity of elected members of the Committee of Management of the Mercantile Co-operative Thrift & Loan Society Limited Selangor (hereafter referred to as the "Society") and from taking control of the offices of the Society at Bangunan Koperasi Mercantile, 54A Masjid India, Kuala Lumpur and from taking possession of any document, papers and files belonging to the Society and from convening meetings of the Society or in any way interfering or intermeddling in the business of the Society.

On 22 April 1982 the defendants applied to set aside the interlocutory injunction. Soon thereafter the defendants made another application to set aside the writ on the grounds of lack of jurisdiction and want of authority in suing the Society.

On 6 May 1982 the application to set aside the interlocutory injunction was heard. The defendants sought to set aside the interlocutory injunction on broadly the following grounds:

(1) there is a dispute among the members of the Society or between certain members and the committee of management of the Society and in view of the provision of s. 49 of the Cooperative Society Ordinance 1948 relating to any dispute "touching the business of a registered society" the issue of the writ and the application for the interlocutory injunction were premature as the remedies provided by the statute have not been exhausted;

(2) the writ and the application were taken out without the authority of the third plaintiff; and

(3) the *ex parte* injunction was obtained by suppression or omission of material facts and there was deliberate misrepresentation of material facts.

As the second application of the defendants to set aside the writ is also based on the first two grounds set out above, counsel accordingly submitted primarily on the third ground. The issue in the present application is therefore confined to the question whether there was suppression or omission of material facts and whether there was deliberate misrepresentation of material facts when the plaintiffs applied for the *ex parte* injunction.

The application for interlocutory injunction was supported by the affidavit of the first plaintiff, Prof. Kahar Bador, dated 8 April 1982. The affidavit sets out briefly the background of the dispute. The material date was 4 April 1982 being the date of the 48th annual general meeting of the Society. In accordance with by-law 88 of the Society's by-laws ballot papers had been sent to members of the Society together with notice of the general meeting. The election was supervised by the senior cooperative Development officer. According to the affidavit all the plaintiffs were then duly elected as members of the committee of management for the year 1982.

The affidavit concluded with the statement that the election of the defendants were however not in accordance with the by-laws of the Society and was therefore null and void and as such they have no right to meddle in the affairs of the Society. Because the assets of the Society exceeds RM19 million as shown in the balance sheet of the Society as at 31 December 1980, the plaintiffs urged that the injunction be issued to restrain the defendants from causing incalculable loss to the Society.

In the affidavit of one Ho Tiap Guan dated 9 April 1982 he stated that he was a member of the Society and was appointed as assistant chief supervisor in the election of the committee members at the annual general meeting concerned. He stated that none of the persons elected from the floor, namely the defendants, were elected by ballot papers. He attached to his affidavit a photostat copy of the results of voting by ballot as shown in the exhibit which indicates that the first plaintiff obtained 2,666 votes, the second plaintiff obtained 2,088 votes and the third plaintiff 1,931 votes. It does not seem to be disputed that the Society has a total number of members of more than 17,000 but only about 460 were present at the said annual general meeting.

The law in granting or refusing interlocutory injunction is clear and so is the law on the exercise of the Court's discretion to dissolve an interlocutory injunction. The law on the granting of interlocutory injunction is neatly expressed by the Lord Chancellor in *The Great Western Railway Co. v. The Birmingham & Oxford Junction Railway Co. & Ors.* [1978] 1 MLJ 42, where he said:

> It is certain that the Court will in many cases interfere and preserve property in *status quo* during the pendency of a suit, in which the rights to it are to be decided, and that without expressing, and often without having the means of forming, any opinion as to such rights... it is true that the Court will not so interfere, if it thinks that there is no real questions between the parties; ... in order to support an injunction for such purpose, it is not necessary for the Court to decide upon the merits in favour of the Plaintiff.

The law on dissolving an interlocutory injunction is also clear especially where the application to dissolve an interlocutory injunction is based solely on the allegation of misrepresentation or suppression of material facts.

An interlocutory injunction will not be dissolved unless the misrepresentation or suppression was of such a character as to mislead the Court or if the true picture was presented the Court would probably have not granted the injunction.

What are the alleged suppression or misrepresentations in this case? It is alleged by the defendants that the affidavit of the first plaintiff omitted to mention a number of matters and events which took place at the annual general meeting. These matters and events are as follows:

(1) Notice was given by the first defendant before the annual general meeting that he would raise questions relating to alleged misappropriation of the Society's funds by the committee;

(2) After the results of the election of the plaintiffs were announced there was dissatisfaction among the members present and subsequently at the same meeting a vote of no-confidence was passed against the committee of management;

(3) That there was a resolution passed at the meeting carried almost unanimously that the management of the Society be handed over to the Ministry of Rural Development pending the outcome of investigations on the misappropriation.

The defendants in effect also complained that paragraph 8 of the affidavit of the first plaintiff tended to mislead the Court by referring to the defendants seizing control of the meeting which they claimed never happened.

An interlocutory injunction is merely provisional in its nature, and does not conclude a right. It is said that a person who comes to the Court for an interlocutory injunction is not required to make out a case which will entitle him at all events to relief at the hearing. It is enough if he can show that he has a fair question to raise as to the existence of the right which he alleges. It can be seen that in an application for an interlocutory injunction the Court interferes on the assumption that the party who seeks its interference has the legal right which he asserts. A man who seeks the aid of the Court must be able to show a fair *prima facie* case in support of the title which he asserts. He is not required to make out a clear legal title. It is sufficient that he satisfies the Court that he has a fair question to raise as to the existence of the legal right which he sets up, and that there are substantial grounds for doubting the existence of the alleged legal right, the exercise of which he seeks to prevent. It has also been accepted that the mere existence of a doubt as to the plaintiff's right to the property, interference with which he seeks to restrain, does not of itself constitute a sufficient ground for refusing an injunction.

In the instant case there are many allegations against the rights of the plaintiffs to hold office in the Society. Firstly, it is said that the first plaintiff, Prof. Kahar Bador, was in fact disqualified from being a candidate by virtue of certain by-laws of the Society. Secondly, there are charges of malpractice and misappropriation against him and others. Thirdly, there is also the allegation that the by-law of the Society was violated by not indicating clearly on the ballot papers candidates who had served in office more than four years continuously. Finally, there were other irregularities in the elections of the plaintiffs.

All these allegations are however denied by the plaintiffs. These questions therefore become serious issues to be tried. In my opinion the counter-allegations by the plaintiffs are equally serious. For example the allegation in the affidavit of the first plaintiff dated 5 May 1982 which seem to case doubt on the legality of the supposed care-taker committee of management itself, namely the defendants, since it is alleged that the by-laws of the Society do not provide

for the election of such a body. Since the defendants were not elected in accordance with any provision of the by-laws of the Society they have therefore no powers to interfere in the management of the Society. Then there is the allegation that the chairman of the meeting which elected the care-taker committee, Raja Nasron bin Raja Ishak, was not even a member of the Society at the material time.

It can be noticed however that despite the many allegations and counter-allegations in the affidavits there has not been one allegation that the annual general meeting convened on 4 April 1982, that is the 48th annual general meeting of the Society, was unconstitutional or otherwise invalid. Since the plaintiffs were elected in accordance with the procedure provided by the by-laws of the Society, it cannot be disputed in my view at least at this stage, that *prima facie* they were validly elected to office. Until it be shown at the hearing that there were irregularities or other violations which render the election null and void, it must be presumed that the plaintiffs are for the moment holding office validly. A vote of no-confidence passed against them soon after the results of the election was announced did not make their election any less valid.

In the contexts of the facts now available before the Court if is my opinion therefore that the omissions by the first plaintiff to mention certain matters in his affidavit are not fatal to his application for interlocutory injunction. The omissions did not amount to a suppression of material facts or omission intended to mislead the Court nor was the Court in fact misled.

For the above reasons the motion was dismissed and the interlocutory injunction ordered to continue until trial of the suit. SAR to fix early date of hearing of the second application.

Also found at [1982] CLJ 370